

Senate Bill 184

By: Senator Weber of the 40th

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 7 of Title 10 of the Official Code of Georgia Annotated, relating to relative rights of creditor and surety, so as to provide for certain requirements regarding service of a notice of commencement to a contractor; to provide for the computation of time under certain circumstances; to provide for a procedure for the application of certain forms; to amend Article 1 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to general provisions relative to contracts for public works, so as to provide for certain requirements regarding service to a contractor; to provide for a procedure for the application of certain forms; to amend Part 4 of Article 3 of Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to payment bonds, so as to provide for certain requirements regarding service to a contractor; to provide for a procedure for the application of certain forms; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 7 of Title 10 of the Official Code of Georgia Annotated, relating to relative rights of creditor and surety, is amended by revising Code Section 10-7-31, relating to rights of certain parties claiming protection under a payment bond or security deposit and notice of commencement of work, as follows:

"10-7-31.

(a) Where a payment bond or security deposit is provided pursuant to a contract for the construction of an improvement to property other than a public work, every person entitled to claim the protection of the payment bond or security deposit who has not been paid in full for labor or material furnished in the prosecution of the work referred to in such bond or security deposit after the last of the labor was done or performed by him or her or the material or equipment or machinery was furnished or supplied by him or her for which such claim is made, or when he or she has completed his or her subcontract for which such

claim is made, shall have the right to bring an action on such payment bond or security deposit in accordance with the terms thereof for the amount, or the balance thereof, unpaid at the time of the commencement of such action and to prosecute such action to final execution and judgment for the sum or sums due him or her; provided, however, that any person having no contractual relationship express or implied with the contractor furnishing such payment bond or security deposit on a project where the contractor has complied with the ~~Notice of Commencement~~ notice of commencement requirements in accordance with subsection (b) of this Code section shall not have the right to bring an action on such payment bond or security deposit in accordance with the terms thereof unless such person gave to the contractor within 30 days from the filing of the ~~Notice of Commencement~~ notice of commencement or 30 days following the first delivery of labor, material, machinery, or equipment, whichever is later, a written notice to contractor. ~~Notice to Contractor setting forth.~~ The notice to the contractor shall be sent by registered or certified mail or statutory overnight delivery, to the contractor, at any place at which the contractor maintains an office or conducts his or her business or at his or her residence; alternatively, notice may be served in any manner in which the sheriffs of this state are authorized by law to serve summons or process. The notice to contractor shall set forth:

(1) The name, address, and telephone number of the person providing labor, material, machinery, or equipment;

(2) The name and address of each person at whose instance the labor, material, machinery, or equipment are being furnished;

(3) The name and location of the project set forth in the ~~Notice of Commencement~~ notice of commencement; and

(4) A description of the labor, material, machinery, or equipment being provided and, if known, the contract price or anticipated value of the labor, material, machinery, or equipment to be provided or the amount claimed to be due, if any.

(b) Where a payment bond or security deposit is provided pursuant to a contract for the construction of an improvement to property other than a public work, the contractor furnishing the payment bond or security deposit shall post on the project site and file with the clerk of the superior court of the county in which the project is located a ~~Notice of Commencement~~ notice of commencement no later than 15 days after the contractor physically commences work on the project and give a copy of the ~~Notice of Commencement~~ notice of commencement to any subcontractor, materialman, or person who makes a written request of the contractor. Failure to give a copy of the ~~Notice of Commencement~~ notice of commencement within ten calendar days of receipt of the written request from the subcontractor, materialman, or person shall render the notice to contractor requirement of subsection (a) of this Code section inapplicable to the subcontractor,

materialman, or person making the request. ~~Notice of Commencement~~ Notice of commencement shall include:

- (1) The name, address, and telephone number of the contractor;
- (2) The name and location of the project being constructed and the legal description of the property upon which the improvements are being made;
- (3) The name and address of the true owner of the property;
- (4) The name and address of the person other than the owner at whose instance the improvements are being made, if not the true owner of the property;
- (5) The name and the address of the surety for the performance and payment bonds, if any;
- (6) The name and address of the construction lender, if any; and
- (7) The name and address of the holder of the security deposit provided, if any.

(c) The failure to file a ~~Notice of Commencement~~ notice of commencement under subsection (b) of this Code section shall render the ~~Notice to Contractor~~ notice to contractor requirements of subsection (a) of this Code section inapplicable.

(d) The clerk of the superior court shall file the ~~Notice of Commencement~~ notice of commencement provided for in this Code section within the records of that office and maintain an index separate from other real estate records or an index with the preliminary notices of lien specified in subsection (a) of Code Section 44-14-361.3. Each such ~~Notice of Commencement~~ notice of commencement shall be indexed under the name of the true owner and the contractor as contained in the ~~Notice of Commencement~~ notice of commencement."

SECTION 2.

Said article is further amended by adding a new Code section to read as follows:

"10-7-32.

For purposes of this article:

(1) The computation of time shall be determined pursuant to paragraph (3) of subsection (d) of Code Section 1-3-1.

(2) The provisions of Code Section 44-14-366 regarding interim waiver and release upon payment, waiver and release upon final payment, and the affidavit of nonpayment shall apply to payment bond rights and remedies under this article in the same manner and to the same extent as such provisions apply to lien rights and remedies under Code Section 44-14-366."

SECTION 3.

Article 1 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to general provisions regarding contracts for public works, is amended by adding a new Code section to read as follows:

"13-10-3.

For purposes of this article, the computation of time shall be determined pursuant to paragraph (3) of subsection (d) of Code Section 1-3-1."

SECTION 4

Said article is further amended in Part 4, relating to payment bonds, by revising paragraphs (1) and (2) of subsection (a) of Code Section 13-10-63, relating to pursuit of action by a person entitled to protection of a payment bond, as follows:

"(1) Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing such payment bond or security deposit on a public works construction project where the contractor has not complied with the notice of commencement requirements shall have the right of action upon the payment bond or security deposit upon giving written notice to the contractor within 90 days from the day on which such person did or performed the last of the labor or furnished the last of the material or machinery or equipment for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was performed or done. The notice to the contractor ~~may~~ shall be served by registered or certified mail or statutory overnight delivery, ~~postage prepaid, duly addressed~~ to the contractor, at any place at which the contractor maintains an office or conducts his or her business or at his or her residence, by depositing such notice in any post office or branch post office or any letter box under the control of the United States Postal Service; alternatively, notice may be served in any manner in which the sheriffs of this state are authorized by law to serve summons or process; and

(2) Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing such payment bond or security deposit on a public works construction project where the contractor has complied with the notice of commencement requirements in accordance with subsection (a) of Code Section 13-10-62 shall have the right of action on the payment bond or security deposit, provided that such person shall, within 30 days from the filing of the notice of commencement or 30 days following the first delivery of labor, material, machinery, or equipment, whichever is later, give to the contractor a written notice ~~setting forth~~. The notice to the contractor shall be sent by registered or certified mail or

statutory overnight delivery, to the contractor, at any place at which the contractor maintains an office or conducts his or her business or at his or her residence; alternatively, notice may be served in any manner in which the sheriffs of this state are authorized by law to serve summons or process. The notice to the contractor shall set forth:

(A) The name, address, and telephone number of the person providing labor, material, machinery, or equipment;

(B) The name and address of each person at whose instance the labor, material, machinery, or equipment is being furnished;

(C) The name and the location of the public works construction site; and

(D) A description of the labor, material, machinery, or equipment being provided and, if known, the contract price or anticipated value of the labor, material, machinery, or equipment to be provided or the amount claimed to be due, if any."

SECTION 4.

Said article is further amended in Part 4, relating to payment bonds, by adding a new Code section to read as follows:

"13-10-66.

The provisions of Code Section 44-14-366 regarding interim waiver and release upon payment, waiver and release upon final payment, and the affidavit of nonpayment shall apply to payment bond rights and remedies under this part in the same manner and to the same extent as such provisions apply to lien rights and remedies under Code Section 44-14-366; provided, however, that no additional rights to a lien on public property shall be granted pursuant to this part."

SECTION 5.

Part 4 of Article 3 of Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to payment bonds, is amended by revising paragraphs (1) and (2) of subsection (a) of Code Section 36-91-93, relating to rights of person protected by payment bond or security deposit, as follows:

"(1) Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing such payment bond or security deposit on a public works construction project where the contractor has not complied with the notice of commencement requirements shall have the right of action upon the payment bond or security deposit upon giving written notice to the contractor within 90 days from the day on which such person did or performed the last of the labor or furnished the last of the material or machinery or equipment for which

such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was performed or done. The notice to the contractor ~~may~~ shall be served by registered or certified mail, ~~postage prepaid~~, or statutory overnight delivery, ~~duly addressed~~ to the contractor, at any place at which the contractor maintains an office or conducts his or her business or at his or her residence, by depositing such notice in any post office or branch post office or any letter box under the control of the United States Postal Service; alternatively, notice may be served in any manner in which the sheriffs of this state are authorized by law to serve summons or process; and

(2) Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing such payment bond or security deposit on a public works construction project where the contractor has complied with the notice of commencement requirements in accordance with subsection (a) of Code Section 36-91-92 shall have the right of action on the payment bond or security deposit, provided that such person shall, within 30 days from the filing of the notice of commencement or 30 days following the first delivery of labor, material, machinery, or equipment, whichever is later, give to the contractor a written notice ~~setting forth~~: The notice to the contractor shall be sent by registered or certified mail or statutory overnight delivery, to the contractor, at any place at which the contractor maintains an office or conducts his or her business or at his or her residence; alternatively, notice may be served in any manner in which the sheriffs of this state are authorized by law to serve summons or process. The notice to the contractor shall set forth:

(A) The name, address, and telephone number of the person providing labor, material, machinery, or equipment;

(B) The name and address of each person at whose instance the labor, material, machinery, or equipment is being furnished;

(C) The name and the location of the public works construction site; and

(D) A description of the labor, material, machinery, or equipment being provided and, if known, the contract price or anticipated value of the labor, material, machinery, or equipment to be provided or the amount claimed to be due, if any."

SECTION 6.

Said part is further amended by adding two new Code sections to read as follows:

"36-91-96.

The provisions of Code Section 44-14-366 regarding interim waiver and release upon payment, waiver and release upon final payment, and the affidavit of nonpayment shall apply to payment bond rights and remedies under this part in the same manner and to the

204 same extent as such provisions apply to lien rights and remedies under Code Section
205 44-14-366; provided, however, that no additional rights to a lien on public property shall
206 be granted pursuant to this part.

207 36-91-97.

208 For purposes of this article, the computation of time shall be determined pursuant to
209 paragraph (3) of subsection (d) of Code Section 1-3-1."

210 **SECTION 7.**

211 All laws and parts of laws in conflict with this Act are repealed.